



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

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REGIONAL
ADMINISTRATOR'S
DIVISION

January 31, 2022

Cheryl Adcock
Bureau of Land Management
Northwest Oregon District
Siuslaw Field Office
3106 Pierce Parkway, Suite E
Springfield, Oregon 97477-7909

Dear Ms. Adcock:

The U.S. Environmental Protection Agency has reviewed the Bureau of Land Management's Notice of Intent to prepare an Environmental Impact Statement for the Hult Reservoir and Dam Safety project located in Lake Creek watershed, near the community of Horton, in Lane County, Oregon (EPA Region 10 Project Number: 18-0025-BLM). EPA conducted the review in accordance with our responsibilities under the National Environmental Policy Act, the Council of Environmental Quality regulations (40 CFR §§ 1500-1508), and Section 309 of the Clean Air Act.

According to the NOI, the purpose of this project is to decommission and remove the Hult Dam to eliminate the potential for a reasonably foreseeable failure of the dam and the associated loss of life and critical services. The project area includes the Hult Reservoir, which is used for recreation and provides wildlife habitat. Action alternatives elements in the Environmental Impact Statement could include engineered or natural stream channels; recreational opportunities; restoration with native and culturally significant plants and wetlands preservation; interpretive signage and kiosks; and wildlife habitat restoration.

EPA appreciates the information provided in the NOI and supports the proposed project purpose. EPA encourages BLM to develop a NEPA analysis that fully evaluates and compares project alternatives and comprehensively assesses direct, indirect, and cumulative effects of the proposed project. EPA offers BLM the enclosed scoping comments on specific topics we believe are important to consider in the NEPA analysis for this project.

Thank you for the opportunity to provide comment of this project proposal early in the NEPA process. If you would like to discuss these comments, please contact Theo Mbabaliye of my staff at (206) 553-6322 or mbabaliye.theogene@epa.gov, or me at (206) 553-1774 or chu.rebecca@epa.gov.

Sincerely,

Rebecca A. Chu, Chief
Policy and Environmental Review Branch

**U.S. EPA Detailed Comments on the Notice of Intent for
the Hult Reservoir and Dam Safety Project
Lane County, Oregon**

Water Quality Impacts

Section 303(d) of the Clean Water Act requires the State of Oregon and Tribes with EPA-approved Water Quality Standards identify water bodies that do not meet WQS. This section of the CWA also requires the development of water quality restoration plans (Total Maximum Daily Loads) to meet water quality criteria and associated beneficial uses. EPA recommends that the EIS include the following information:

- Impacted waters, the nature of the impacts, and specific pollutants likely to affect those waters.
- Water bodies potentially affected by the project that are listed on the State's most current EPA-approved CWA Section 303(d) lists. For these waterbodies, evaluate the potential direct, indirect, and cumulative impacts to water quality standards and criteria. Consider focusing on the potentially significant threats to water quality in these systems from existing conditions and proposed management actions.
- Existing restoration and enhancement efforts for potentially impacted waters, how the proposed project would coordinate with on-going protection efforts, and any mitigation measures, including compensatory mitigation under the CWA, to reduce impacts to surface waters of the United States.
- How the project will meet the antidegradation provisions of the CWA. The provisions prohibit degrading water quality within water bodies that are currently meeting WQS.

The CWA requires any construction project resulting in the disturbance of one or more acres to have authorization under the construction storm water discharge permit for industrial activities. EPA recommends that the EIS include the following information:

- Direct, indirect, and cumulative impacts from storm water discharges.
- How the project will meet the requirements of the National Pollutant Discharge Elimination System permit program under the CWA, including development of Storm Water Pollution Prevention Plans, reporting, and monitoring.
- Best management practices, erosion and sediment control, and other mitigation measures to minimize impacts.
- Discuss adaptive management monitoring programs that will be implemented to determine potential impacts on water quality and beneficial uses.

Water Quantity

Removal of the dam and changes in project operations is expected to have effects on water flows and water quantity. EPA recommends that the EIS include a description of water rights, water allocation, water supply and demand balance within the decision area under both the no action and action alternatives. In assessing the current and future water needs in this area, consider describing all the stressors on the system – including surface water withdrawals, ground water pumping, firefighting, and the potential impacts of climate change.

Aquatic Resources, Riparian Areas, and Wetlands

EPA recommends including the following information in the EIS for the project:

- Description of all waters of the U.S., including wetlands and any navigable waters in the analysis area. Provide maps, pathways of alternative routes through the planning area, crossings, and resources likely to be impacted by the crossings. Include acreages and channel lengths, habitat types, values, and completed functional assessments of these waters.
- Alternatives that avoid, minimize, and/or otherwise mitigate unavoidable adverse environmental impacts, thus maximizing environmental benefits.
- An evaluation of the project impacts, including beneficial impacts of restoration, on aquatic resources from each action alternative. Include in this evaluation analysis of the cumulative effects of channel and near shore/wetland modifications in the project area to determine the significance of their effects in the Upper Siuslaw River Basin.
- Whether the project will result in discharge of dredged or fill materials into surface waters of the U.S. If so, a CWA §404 permit from the U.S. Army Corps of Engineers would be required for the project, including compliance with the Section 404(b)(1) Guidelines. The EIS would need to describe this permit application process and recommended measures to protect aquatic resources from impacts resulting from the proposed project. EPA recommends the EIS also include mitigation plans, including compensatory mitigation required under the CWA, to address unavoidable adverse impacts to waters of the U.S. Coordination with state water quality and other relevant resource agencies working in the planning area will also be important in determining how best to proceed with the CWA § 404 permitting process, given proposed project implementation timelines.
- Plans to utilize a natural channel design approach for any constructed stream segments, and seed and/or plant reclaimed wetland areas with native vegetation to increase function of riparian and aquatic areas and to preclude the spread of invasive species.
- Floodplain impacts and actions to be taken to minimize the impacts. See CWA §404 and Executive Order 11988, *Floodplain Management*.¹
- Potential impacts to federal and state protected species and their habitat. The project may result in water quantity and quality alterations in adjacent or downstream aquatic systems (e.g., effects on in-stream water quality parameters from dam removal or alterations that may include sediment disturbance that can impact parameters such as turbidity, dissolved oxygen, temperature, removal of foraging habitat, etc.,) that impact ESA listed species. Include identification of listed species occurring within the project area; critical habitat(s); and impacts the project will have on the species and their critical habitat. Explain how the project will meet the ESA requirements, including consultation with the United States Fish and Wildlife Service and National Marine Fisheries Service. This may include preparing a biological assessment. It will be important to coordinate with Oregon Department of Fish and Wildlife to define conservation practices for state protected species.

Cumulative Effects

EPA has issued guidance on how to provide comments on the assessment of cumulative impacts, *Consideration of Cumulative Impacts in EPA Review of NEPA Documents*.⁴ The guidance states that to assess the adequacy of the cumulative impact assessment, there are five key areas to consider:

¹ <https://www.epa.gov/cwa-404/floodplain-management-executive-order-11988>

- Resources, if any, that are being cumulatively impacted.
- Appropriate geographic area and the time over which the effects have occurred and will occur.
- All past, present, and reasonably foreseeable future actions that have affected, are affecting, or would affect resources of concern.
- A benchmark or baseline.
- Scientifically defensible threshold levels.

Range of alternatives

Identify a range of alternatives that avoid, minimize, and compensate for impacts to water, air, wildlife, and other resources. The CEQ recommends that all reasonable alternatives be considered, even if some of them could be outside the capability of the applicant or the jurisdiction of the agency preparing the NEPA document. EPA encourages selection of alternatives that protect, restore, and enhance the environment.

Air Quality

Because the proposed action may result in impacts on air quality, EPA recommends the EIS include:

- A detailed discussion of ambient air conditions (baseline or existing conditions), National Ambient Air Quality Standards (NAAQS) and criteria pollutant non-attainment and maintenance areas in the analysis area and vicinity, if applicable.
- Estimation of criteria pollutant emissions for the analysis area and discuss the timeframe for release of these emissions from construction through the lifespan of the proposed project. The EIS should specify all emission sources and quantify related emissions.
- Specific information about pollutants from mobile sources, stationary sources, and ground disturbance.
- A Construction Emissions Mitigation Plan that identifies actions to reduce diesel particulate, carbon monoxide, hydrocarbons, and oxides of nitrogen (NO_x).
- Potential effects from air pollutants, including air toxics, to workers, ground crews, nearby residents, and any sensitive receptor locations, such as outdoor recreation areas (e.g., parks, trails, etc).
- Mitigation measures to minimize the proposed project impacts to air quality.

Invasive Species

EPA recommends the EIS include measures that are consistent with Executive Order 13112 for Invasive Species.² This should include any existing BLM direction for noxious weed management, a description of current conditions, and best management practices utilized to prevent, detect, and control invasives in the project area. Discuss measures that will be implemented to reduce the likelihood of introduction and spread of invasive species within the planning area. These measures could include collaboration with local weed boards and other weed management organizations and agencies working in the project area to reduce invasive species and related impacts on natural resources.

EPA also encourage BLM to promote integrated weed management, with prioritization of management techniques that focus on non-chemical treatments first, and mitigation to avoid herbicide transport to

² <https://www.govinfo.gov/content/pkg/FR-1999-02-08/pdf/99-3184.pdf>

surface or ground waters. Early recognition and control of new infestations is critical to stop the spread of the infestation and avoid wider future use of herbicides, which could correspondingly have more adverse impacts on biodiversity, water quality, and fisheries.

Impacts of climate change and climate resiliency

EPA recommends that the EIS include a discussion of reasonably foreseeable effects that changes in the climate may have on the proposed project, and what impacts the proposed project will have on climate change consequences. This could help inform the development of measures to improve the resilience of the project. If projected changes could notably exacerbate the environmental impacts of the project, EPA recommends these impacts also be considered as part of the NEPA analysis.

For this project, describe the anticipated changes to the watershed in terms of quantity and timing of snowpack, runoff, and precipitation and how these changes may impact the project area hydrology and the operations. Include impacts to water temperature, flow, sediment transport, and beneficial uses. EPA recommends discussing the potential synergistic effects of the impacts and changes that will result from the various alternatives that are examined for this project. For example, the EIS could consider the synergistic effects of changes in timing and quantity of flows combined with increased air temperatures under climate change and impacts to fish and their stream habitat.

Public involvement

The NOI states that BLM may continue to use a neutral third-party contractor throughout the EIS process to assist with public outreach and engagement. There are several resources that may be helpful in planning future outreach events:

- *The Citizen's Guide to the National Environmental Policy Act.*³
- *Community Guide to Environmental Justice and NEPA Methods.*⁴

Environmental Justice

If the analysis area includes low income or minority populations, the EIS will need to address the potential for disproportionate adverse impacts to these populations as required under Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*.⁵ One tool available to locate populations in the area with environmental concerns is the Environmental Justice Screening and Mapping Tool or EJSCREEN.⁶ EPA considers a project to be in an area of potential EJ concern when an EJSCREEN analysis for the impacted area shows one or more of the eleven EJ Indices at or above the 80th percentile in the nation and/or state. At a minimum, EPA recommends an EJ analysis consider EJSCREEN information for the block group(s) in the proposed action area and a one-mile radius around those areas. EPA caution using larger tracts in the analysis, such as counties or cities, as these may dilute the presence of populations/communities with EJ concerns.

For the proposed project, the one-mile radius could be the area within a mile of the dam location or other benchmark. Areas of impact can be a single block group or span across several block groups and communities. When assessing large geographic areas, consider the individual block groups within the project area in addition to an area wide assessment. Important caveats and uncertainties apply to this screening-level information, especially in rural areas, so it is essential to understand the limitations on

³ https://ceq.doe.gov/get-involved/citizens_guide_to_nepa.html

⁴ <https://www.energy.gov/sites/prod/files/2019/05/f63/NEPA%20Community%20Guide%202019.pdf>

⁵ <https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf>

⁶ <https://www.epa.gov/ejscreen>

appropriate interpretations and applications of these indicators. As the screening tool does not provide data on every environmental impact and demographic factor that may be relevant to a particular location and/or proposed project, consider additional information in an EJ analysis to supplement EJSCREEN outputs.

You may consult the Federal Interagency Working Group on Environmental Justice and NEPA Committee report, *Promising Practices for EJ Methodologies in NEPA Reviews* for additional information, particularly on determining whether the proposed project may result in disproportionately high and adverse impacts.⁷ We recommend that other vulnerable and disadvantaged populations, such as, the elderly, the disabled, and children be included in the analysis.⁸ Other resources that may be of interest during EJ analysis include, but are not limited to, the following:

- Explore the Resilience Analysis and Planning Tool (RAPT).⁹
- Explore the National Risk Index for Natural Hazards.¹⁰

Consultation with Tribal Governments

EPA recommends the EIS describe the process and outcome of government-to-government consultation between BLM and each of the tribal governments that would be affected by the project, issues that were raised, if any, and how those issues were addressed. See Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*.¹¹ As a resource, EPA also recommends consulting the document, *Tribal Consultation: Best Practices in Historic Preservation*.¹²

EPA notes that several tribal entities may be affected by the project, including the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians; Confederated Tribes of the Grand Ronde; Confederated Tribes of the Siletz, and the Coquille Indian Tribe. As these tribes have interest in the planning area waterbodies, fisheries, and other cultural and archeological resources, EPA recommends that they be consulted as the project is developed and implemented.

National Historic Preservation Act

Consultation for tribal cultural resources is required under Section 106 of the NHPA. Historic properties under the NHPA are properties that are included in the National Register of Historic Places or that meet the criteria for the NRHP. Section 106 of the NHPA requires a federal agency, upon determining that activities under its control could affect historic properties, to consult with the appropriate State Historic Preservation Office/Tribal Historic Preservation Office. Under NEPA, any impacts to tribal, cultural, or other treaty resources must be disclosed in the EIS. Section 106 of the NHPA requires that federal agencies consider the effects of their actions on cultural resources.

In EIS, discuss how BLM will avoid or minimize adverse effects on the physical integrity, accessibility, or use of cultural resources or archaeological sites, including traditional cultural properties (TCPs), throughout the project area, and clearly discuss mitigation measures for archaeological sites and TCPs. In addition, EPA recommends providing a summary of all coordination with Tribes and with the State and Tribal Historic Preservation Offices, including identification of NRHP eligible sites and development of a Cultural Resource Management Plan.

⁷ https://www.epa.gov/sites/production/files/2016-08/documents/nepa_promising_practices_document_2016.pdf

⁸ See Executive Order 13045, Protection of Children from Health Risks and Safety Risks, at <https://www.epa.gov/laws-regulations/summary-executive-order-13045-protection-children-environmental-health-risks-and>

⁹ <https://www.fema.gov/emergency-managers/practitioners/resilience-analysis-and-planning-tool>

¹⁰ <https://www.fema.gov/flood-maps/products-tools/national-risk-index>

¹¹ https://www.energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/Req-EO13175tribgovt.pdf

¹² <http://npshistory.com/publications/preservation/tribal-consultation.pdf>

Executive Order 13007 and Indian Sacred Sites

Executive Order 13007 requires federal land managing agencies to accommodate access to, and ceremonial use of, Indian sacred sites by Indian religious practitioners, and to avoid adversely affecting the physical integrity, accessibility, or use of sacred sites.¹³ It is important to note that a sacred site may not meet the NRHP criteria for a historic property and that, conversely, a historic property may not meet the criteria for a sacred site. It is also important to note that sacred sites may not be identified solely in consulting with tribes located within geographic proximity of the project. Tribes located outside the direct impact area may also have religiously significant ties to lands within the planning area and should be included in the consultation process. In the EIS, address the existence of Indian sacred sites in the project areas, including seeps and springs, that may be considered spiritual sites by regional tribal nations; and discuss how BLM will ensure that the proposed action will avoid or mitigate for the impacts to the physical integrity, accessibility, or use of sacred sites.

Monitoring and Adaptive Management

The proposed project will impact a variety of resources for an extended period. EPA recommends that the project include an environmental inspection and monitoring program to ensure compliance with all mitigation measures and assess their effectiveness. EPA recommends the EIS describe the monitoring program and measure the effectiveness (i.e., adaptive management). This will provide opportunity to adjust the project as needed to meet environmental objectives throughout the life of the project. EPA also recommends that the EIS describe a mechanism to consider and implement additional mitigation measures. In addition, the adaptive management and monitoring plan in the EIS may include the following elements:

- Establish how current analysis in the project area (e.g., sediment quality or fish passage monitoring) has been or will be done, and how this analysis will inform monitoring priorities.
- Lay out monitoring questions that will be used to inform the adaptive management process.
- Define how success will be measured.
- Provide information to determine whether management direction is being followed, whether desired results are being achieved, and whether underlying assumptions are valid.
- Be as specific as possible about who is the responsible decisionmaker at critical steps of the monitoring plan.

¹³ <https://www.govinfo.gov/content/pkg/FR-1996-05-29/pdf/96-13597.pdf>